

CIVIL LITIGATION

- 1. In what language(s) may court proceedings be conducted? What arrangements can be made for translation/interpreter services?**

Flemish (same as Dutch), French, or German, according to complicated language rules, depending on the language of the parties, and the place of jurisdiction.

- 2. What types of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?**

Injunctions and/or seizures of assets.

No warning letter is required and can make the pre-action measure useless. However, unjustified pre-action can be subject to damage claims from the victim.

- 3. What are the costs of civil and commercial proceedings? Who bears the costs?**

Court costs themselves are negligible in the judgment of the opportunity to litigate. Furthermore, a procedural indemnity (covering the legal costs of the adverse party) calculated in function of the claim, is due by the losing party.

For example, for a claim from EUR 20'000 until EUR 40'000, a standard procedural indemnity of EUR 2'200 will be due. In specific cases (e.g. very simple or very complicated) the judge can decrease until a minimum of EUR 1'100 or increase until a maximum of EUR 4'400.

- 4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?**

According to the applicable rules of proof.

Documentary evidence is the main method of substantiating a claim or defense.

Electronic disclosure is yet in an embryonic stadium.

- 5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)?**

Can a witness be compelled to attend to give evidence?

According to the applicable rules of proof.

Witness evidence is not a preferred or habitual method of evidence, and very different from the Anglo-Saxon method of witness evidence.

A witness refusing to appear before the court will be sentenced to a fine and subpoenaed to appear before another hearing. He will also be sentenced to the costs caused by his refusal to appear (including costs subpoena). Furthermore, damages may be claimed by the party having requested the hearing of the said witness. Certain exceptions may be appealed to by the non-appearing witness (professional secrecy or, in certain cases, being a blood-relation to one of the parties involved).

- 6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e: may not be disclosed to the court)?**

Pending a full agreement, parties will insist that settlement discussions, either orally or in writing, be kept confidential.

This confidentiality is not sustainable when these discussions occur between the parties directly and is only guaranteed between counsels according to the legal and professional rules.

- 7. How can foreign judgments be enforced?**

Belgium is a party to all international conventions on the enforceability, challenge and annulment of arbitration awards.(Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims). The

internal rules are compatible with these conventions.

ARBITRATION

1. Are mediation clauses in commercial contracts binding and enforceable?

Yes.

2. What is the procedure for mediation?

Ad hoc mediation according to the mediation rules under Belgian law (art. 1724-1737 of the Belgian Judicial Code) or institutional mediation according, e.g., to the rules of CEPANI (the Belgian department of the ICC in Paris).

Is it a popular method for resolving commercial disputes?

No

3. Are arbitration clauses in commercial contracts binding and enforceable?

Yes

4. What type of arbitration is commonly used for resolving commercial disputes: ad hoc arbitration or institutional arbitration?

Ad hoc arbitration according to the arbitration rules under Belgian law (art. 1676-1723 of the Belgian Judicial Code) or institutional arbitration according, e.g., to the rules of CEPANI (the Belgian department of the ICC in Paris).

5. Which arbitration institutes are most popular?

CEPANI, the Belgian department of the ICC in Paris

6. What influence can the parties have on the identity of the arbitrator(s)?

The choice is in their hands, mostly a court president or the arbitration institute are appointed to solve a dispute on the identity of the arbitrator.

7. In what language is an arbitration proceedings conducted?

Choice of the parties, mostly English in international arbitration.

8. What types of pre-arbitration measures are available and what are their limitations?

Injunctions and/or seizures of assets, unless expressly excluded in the arbitration clause.

9. What are the costs of arbitration proceedings and who bears these costs?

Mainly the fees and costs of the arbitrators and, in case of institutional arbitration, an administrative fee. Furthermore, possible fees and costs of experts, witnesses, translator and interpreters.

All are to be borne by the losing party or proportionally by several parties according to the ruling on the merits.

10. What are the basic rules of document disclosure in arbitration? Which documents do not require disclosure?

According to the applicable rules of proof.

Documentary evidence is the main method of substantiating a claim or defense.

11. What is the procedure for witness evidence in arbitration (namely, is it deposition based or witness examination or cross-examination)?

According to the applicable rules of proof.

Witness evidence is not a preferred or habitual method of evidence, and very different from the Anglo-Saxon method of witness evidence.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or

counsel privileged (i.e., may not be disclosed to the Arbitrator)?

Pending a full agreement, parties will insist that settlement discussions, either orally or in writing, be kept confidential.

This confidentiality is not sustainable when these discussions occur between the parties directly and is only guaranteed between counsels according to the legal and professional rules.

Under what circumstances can an Arbitration Award be enforced, challenged or annulled?

Belgium is a party to all international conventions on the enforceability, challenge and annulment of arbitration awards (Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)). The internal rules are compatible with these conventions.